

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2125

2007 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2125

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2125**

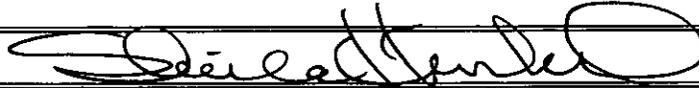
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **January 10, 2007**

Recorder Job Number: **#900**

Committee Clerk Signature



Minutes:

Joe Ibach – ND Real Estate appraiser Qualifications and Ethics Board – *In Favor*

TESTIMONY #1

#1 Need to review transcription #2 Federal guidelines

Proposed significant changes to include the following. Clarifies the fact that the appraisal can be communicated verbally as well as written. This clarifies

#2 ND offers two appraiser credential levels. Licensed Level and Certified General Level

Licensed level has limited scope of work. Prohibits licensed appraisers from valuing residential with transaction value over \$1 million. The licensed property classification, non-complex, 1-4 families residential properties that have a \$1 million and complex 1-4 properties with value of up to \$250,000. Federal guidelines.

See Testimony

S Klein: In some of the areas we've gone from written to verbal, one section, by appraisers, and then also created some sort of training for them, basically, is that everything we've done?

J Ibach: yes, encompasses the whole bill.

S Klein: Your group is behind this? Is there a lot of resistance, folks that don't like what you're doing here, as any time you create other tiers it does create some concerns amongst the group.

J Ibach: We don't have a group. No organized appraiser group in ND. I belong to a group out of Mpls. 250 Licensed and Certified appraisers in the state, that's not enough to have a group. I represent the board and the board supports this. We have not had any response from any other appraiser relative to this at all. Most appraisers, as residential find it to an advantage because it allows them to do more properties in today's market, adds that level for them to become more experienced in that property.

S Hacker: Apprenticeship level, is that an approved level? Do you need to apply and be accepted?

J Ibach: You apply to become apprentice. Have to pass a 7 hour course, 15 hour course for uniform standards and application to be approved by the board.

S Hacker: If you're going to strengthen some of the educational requirements, Bachelor, or....

J Ibach: the requirements are specified by federal oversight and if we don't abide by their min. standards we won't we need federal minimum guidelines. We have those specified education requirements here. We meet minimum federal guidelines

S Hacker: Would you have the ability to go above and beyond what the federal requirements are by this section of law passing the way it does? Could you say, "You now have to have a doctorate degree in real estate?" Above & beyond?

J Ibach: [#11:00] I was going to see if the wording: If we added the wording: "Successfully complete educational requirements established by the board and mandated by Federal 'whatever', to meet the minimum standards," I think that would clarify that, because it's always been our intent from day one that we jus meet the minimum standards. I think that

would probably provide some clarification. We want to make sure we don't want the law above and beyond.

S Wanzek: Because of uniformity and being in compliance with the law, we ELIMINATED education requirements for insurance agents and now we're told that for Federal reasons we need to mandate education, am I wrong, is it more or less requiring you to implement an education program before can apply for a permit?

J Ibach: In our profession, you have to have education or you're not going to get licensed or certified.

S Klein: You're testing to get your license as you are with real estate or insurance?

J Ibach: Before you get tested, you have to meet the minimum requirements for education, a certain amount of hours of education before you can take the test.

S Wanzek: Confused by it

S Behm: An appraised price is between buyer and seller..right?

J Ibach: That's sales price. Appraised value is the appraisers opinion of value, we don't establish prices, we establish value.

S Behm: Our township appraiser has no more education in appraising than I do, not as much, yet he goes and appraises farm buildings which is required. Building for farm family is exempt, but he tacks a price on it. Bothers me that he has that authority and has no more schooling than I do.

J Ibach: You have to go back to change the tax law. I can't address that.

Q? Favor?

Klause Lemke – represent ND Association of Realtors – *In Favor*

We find no problems with the bill, more like housekeeping and would like control better in our local in-state rather than the Federal level, so we support this bill.

Q?

S Hacker: is going to bring more appraisers or less or unchanged the amount of appraisers in the field today?

K Lemke: I think it will be unchanged

Q?

S Wanzek: [#14:48] There wouldn't be any objections if we more clearly defined that language to from educational standards to comply with Federal, or not to exceed Federal?

K Lemke: I think that's a GREAT suggestion. This board has committed to that but tomorrows board might not.

S Klein: Our intern's already working on that.

Q? Favor? Opposition?

CLOSE

S Klein: S Hacker, Stephanie is going to work on that verbiage. Hold until we see, we'll pick that up next week.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2125 B**

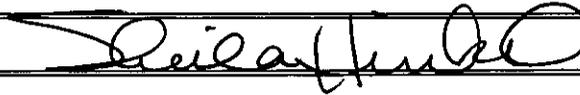
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **January 15, 2007**

Recorder Job Number: **1093 M1:40**

Committee Clerk Signature



Minutes:

S Klein: Not to exceed minimal Federal education requirement standards. Are we making it more difficult. On page 4, line 2, after board, it would say, "Not to exceed the minimum educational requirement standards." Why make it more stringent than the Federal?

S Wanzek: the concerns I recall was the state would exceed or demand more than Federal requirements.

S Andrus: Motion to adopt amendment to 2125.

M – Andrist

Second: Wanzek

S Potter: Opposes amendment

S Hacker: can we vote on this amendment another day?

S Klein: OK

S Hacker: Working on it with another appraiser, who does not sit on the board.

S Behm: Doesn't understand the amendment.

S Klein: Amendment The State Board could not exceed the Federal requirements.

Some questions to be answered. Recess. M6:07

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2125 C**

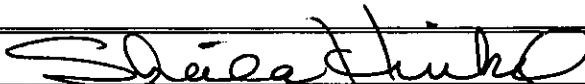
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **January 17, 2007**

Recorder Job Number: **1325**

Committee Clerk Signature



S Klein: We were going to work with them on this amendment.

___ We're not bill writers, so we don't know all the drafts and regulations. We went to the Legislative Attorney, we wanted to add the second level {?} Can you go through it and make sure the rest of it makes sense. When he pulled out the reference, where you see the lines crossed out. S Hacker, said, as I read it in the "apprentice level", you can actually require an apprentice to have a Doctorate degree to qualify as an apprentice, we said, "Well, we don't want to do that, that's not how we get people into business is to over qualify them." If there is some language that would satisfy you, that we're not going to go any stronger than that.

The Attorney said, the problem is that on the 4th amendment is that a bill may not [m 1:40] We don't want to do anything we can't do, if we're not supposed to do it. We didn't know that. If they raise the minimum, we raise the minimum, but if you establish it at a point in time, that you have to follow the minimum with the Federal law and if you change the minimums, we'll have to come back here in the next 2 years and the next 2 years.

S Hacker: The educational requirements are required to do any appraisals that have any Federal programs attached to it. FHA,

___ We have a federal law that is tied to the bill and the state obligation is to make sure to qualify at the state level.

S Klein: If we adopt the amendment it would seem to me that it would still allow them to function, it just says it wouldn't exceed the Federal minimum education requirements. The only idea there was, what if the state creates some major hurdles for other. Whether we need this amendment or not, I don't know. Either we get this discussion going or we'll just have to move along and move along and someone work with.... We just don't want to take any more testimony on this.

S Wanzek: As I understand it, it was to make it comply with Federal educational guidelines. If it is: "not to exceed," then it can't go under the minimum or over the maximum. Say they have to follow Federal Standards.

S Andrist: Seems to me, if you use Federal standards baseline, this is the best way to present those standards.

S Heitkamp: We'll be looking at it over and over. Just say it needs to comply with Federal standards, the next 2 years you won't be seeing the bill.

S Klein: Doesn't this take it up to the Federal Standards?

S Heitkamp: The reason for the amendment is so they don't go beyond that. We're acknowledging the fact that we're putting up a little safeguard, so there is not fence-building, if it's too bad for the realtors, then it goes to the House.

S Potter: In testimony it was required that we do this. Need to comply with federal standards.

Motion to move amendment SB 2125

"Not to Exceed Minimum Federal Requirements"

Motion S Heitkamp

Second S Wanzek

Roll for Do Pass Ammendment: 7-0 Motion Carried

Page 3
Senate Industry, Business and Labor Committee
Bill/Resolution No. 2125 C
Hearing Date: January 17, 2007

Motion: Do Pass as Ammended: S Heitkamp

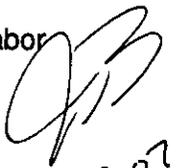
Second Wanzek

Do Pass As Ammended on SB 2125

Roll for Do Pass As Ammended: 7-0 Motion Carried

Carrier: Senator Klein

January 17, 2007


1-18-07

PROPOSED AMENDMENTS TO SENATE BILL NO. 2125

Page 4, line 2, after "board" insert ". which may not exceed federal education requirement standards."

Page 4, line 5, after "board" insert ". which may not exceed federal education requirement standards."

Renumber accordingly

Date: 1-17-07

Roll Call Vote: 21

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2125

Senate INDUSTRY BUSINESS & LABOR Committee

Check here for Conference Committee

Legislative Council Amendment Number amendment

Action Taken _____

Motion Made By Heitkamp Seconded By Wanzek

Senators	Yes	No	Senators	Yes	No
Chairman Klein, Jerry	✓		Senator Behm, Arthur	✓	
Senator Hacker, Nick VC	✓		Senator Heitkamp, Joel	✓	
Senator Andrist, John	✓		Senator Potter, Tracy	✓	
Senator Wanzek, Terry	✓				

Total Yes 7-0 No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2125: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2125 was placed on the Sixth order on the calendar.

Page 4, line 2, after "board" insert ", which may not exceed federal education requirement standards."

Page 4, line 5, after "board" insert ", which may not exceed federal education requirement standards."

Renumber accordingly

2007 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2125

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2125

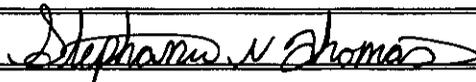
House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: February 27, 2007

Recorder Job Number: 4034

Committee Clerk Signature



Minutes:

Chair Keiser opened the hearing on SB 2125.

Joe Ibach, ND Real Estate Appraiser Qualifications & Ethics Board: Support SB 2125.

See written testimony #1.

Rep. Dietrich: On page 1, line 20 any communication on appraisal, which could mean you and I are at a birthday party, and I ask what my house is worth, and you say \$150,000. That is an appraisal?

Joe: That is an appraisal.

Rep. Dietrich: From that point, what do you do?

Joe: As an appraiser, once I have communicated an appraisal, the results, I as an appraiser need to go back, and document how I supported that.

Rep. Dietrich: Do you send me a bill?

Joe: No, I could not send you a bill, unless there was a predetermined contract in place.

Rep. Dietrich: The second page of the bill line 7, I see a permit was mentioned. Then on line 15, permit me to get a permit, and not a valid license?

Joe: My recollection is we use the word permit, but we have a license classification, and we have a certified classification. If we put the word license in there, it's going to be confusing.

We felt permit takes care of the apprentice, the license, the certified residential, and the certified general appraiser.

Rep. Dietrich: On line 25, page 2, who would be the designated representative?

Rep. Keiser: What it's really saying is the board can't at a meeting say we can't do that. We'll have our attorney, or executive director, or a board member represented, and that becomes their designated representative.

Rep. Dietrich: On page 3 lines 29-30 an apprentice may only assist the license of a certified appraiser in performance and appraisal assignment. An organization is based to have reciprocity with the state of ND, and can be based in Minnesota, SD, and they have apprentice appraisers in Fargo, Grand Forks, and the apprentices are going out and appraising property, and the certified appraiser is signing off on the appraisal. Do you think this has an impact?

Joe: You bring up a very interesting point. Our interpretation is that if you're an apprentice, and you hold an apprentice permit in the state of ND, you have to be supervised by a licensed certified appraiser. Now, where that licensed certified appraiser resigns becomes an issue. I know they have to be licensed, and certified in the state of ND.

Rep. Dietrich: In the new language only is added, they only can assist, and the certified appraiser must be at the residence. Do they assist them physically, or can they do the basic appraisal, send it to the office, and have that appraiser sign off, because he basically did the appraisal, he didn't assist, or is that assistant?

Joe: Our rules specify the first 25. If I have an apprentice appraiser under me, our rules require that you as the supervisory appraiser must inspect the first 25 properties with the apprentice. After that, it's up to the supervisor appraiser to determine whether or not the apprentice is confident to go out, and do it themselves. A lot of that is dictated by clients who want a certified licensed appraiser to inspect their property with the apprentice.

Rep. Dietrich: On page 5 line 2, the language that is struck is having a high school education that's equivalent, and must successfully complete the education requirements established by the board. Can you explain that portion?

Joe: The new guidelines that are coming into place as of January 1, 2008 specify what that is. As a licensed appraiser starting January 1, 2008 you don't need the college level requirements. To be a certified residential as of January 1, 2008 you have to have an associate degree or higher, by the approval of the required degree you can have 21 semester credit hours covering the following subjects. As of January 1, 2008 to be a certified general, you have to have a bachelors degree or higher, in lei of the required 30 semester credit hours covering the following, etc. These minimum requirements are spelled out in the federal regulations, so we just essentially want to meet those that are established by the board, or at the provisions to meet the minimum standards.

Rep. Dietrich: You're trying to make federal appraisal standards. You're attempting to add another level of appraisal which is certified residential appraisers?

Joe: Yes.

Rep. Ruby: I'm wondering why your interpretation of which may not exceed federal education requirements is eliminated. In my opinion, it doesn't say education requirements established in 2007, it seems like it could evolve, and be somewhat open to whatever the federal requirements are.

Joe: All I can tell you is what I've been told. Essentially, what I have in front of me is the ND legislative drafting manual 2005. On pages 97 and 98 it says a statute that incorporates by references, standards from another source such as federal law, or professional code will be regarded as incorporated to the standards that existed before statutory reference, because interpreting to incorporate the future changes would constitute an unconstitutional delegation

of legislative authority to the body responsible for those standards in the code. So, what it says is if you adopt something tied to federal today, and tomorrow we need to make a change, you're out of luck because it is future. So, we have an issue if we need to change our rules in the future if we tie that to a federal requirement.

Rep. Ruby: I would agree with that. I would guess that if the reference to exact code, or exact sections of federal law that is this vague which is saying that the educational requirements of the federal law as that changes that doesn't change the requirements. I could see if it did reference to a certain code or law that at that time existed in law, then if it changes, or is not addressed in this I'd refer to this change.

Rep. Kasper: On page 1, line 20 where it's saying an appraisal report means any communication. Why does a person generally ask an appraiser to do an appraisal?

Joe: Primarily, in my practice it's for financing.

Rep. Kasper: When you're looking for the appraisal, because you're looking for financing, when you go into your financing area to apply for your loan, the financial clerk isn't going to say to you what is your verbal appraisal. The financial officer is going to say go back, and get it in writing, correct?

Joe: Normally, most appraisals are done for financing, and they want something in writing.

Rep. Kasper: Why would we possibly want to put in statute that a verbal communication, which is most of the time worthless to the majority of the people who are asking for financing would be acceptable? Why wouldn't we want to require a written report, as opposed to these verbal statements?

Joe: It needs to be in statute, because if I am a professional appraiser, and I'm out there and someone asks me what this property is worth, and I tell them that's an appraisal, appraisers need to understand that so that they recognize that this is a profession, and our code of ethics

also requires that if you're going to give a professional opinion, its got to be documented in the file. We just need the appraisers to understand that.

Rep. Kasper: So, what you're trying to get to is you're trying to make it incumbent on the appraiser to be careful what he or she says about a piece of property, so that they don't make an off the wall statement that a potential client is relying on, and then all of a sudden down the road the written communication is different. Is that where you're trying to get here?

Joe: Yes, very much so.

Rep. Kasper: Why wouldn't we then want to add to this language that says something to the affect that an appraisal report means any communication of an appraisal which is followed by a written documentation of that communication, so that we are sure that the written documentation substantiates the verbal appraisal?

Joe: As appraisers, we also must write our appraisals, and report our appraisals according to the uniform standards of professional appraisal practice. It is a document that we as appraisers have to abide by, and that is also federally mandated. If I'm correct, in uniform standards, it already requires that if you give a verbal appraisal, you have to follow it in a file with written documentation.

Rep. Kasper: A written communication in your file is much different then a financial appraisal in my file that I can give to a lender. The person that you're serving who needs something in writing gets what he or she really wants, as opposed to I gave you a verbal standard, and I've got the documentation in my file, but you don't have it when you need it.

Joe: It's possible, but what about the client that doesn't want it in writing. It's not incumbent upon the appraiser to determine what the client wants to do with it. If the client just wants a verbal number, that's all I need to give them, because I'm working for the client, and if he doesn't want a written document, that's fine.

Rep. Thorpe: On page 6, lines 15-17 there is about 3 new underlined sections there. Are those in here to come under new federal regulations on this, or is it an attempt to create new levels?

Joe: The language you're seeing in there essentially says we already had the apprentice and the certified general license in there. What we did there is just clarify, because since we're adding a new level, we wanted to make sure that we had a certified residential appraiser, a certified general appraiser, and now the apprentice appraiser.

Rep. Thorpe: Is that the reason you're doing that to follow federal law on this, or is this your department's level that you wish?

Joe: We already had the licensed level, and the certified level. We did not have the certified residential level, so we are adding that because there is a void. In doing so, we're filling that void, because presently the licensed appraiser can't appraise that house. The certified appraiser might not be confident to do that house, so we now have the certified residential level, and he as the certified residential appraiser should have the competency to do that house.

Rep. Thorpe: The certified general, according to the underline, that's new also.

Joe: Before it was certified general, it was just certified appraiser.

Rep. Thorpe: In other words, there's about 4 levels all together now of possible appraisers, and my thoughts were for the four people, different individuals that are aspiring to go up the ladder, what is the process from your basic apprentice, all the way through?

Joe: See handout A.

Rep. Keiser: Why would somebody who is licensed as a residential appraiser, why would they be able to do a house worth \$2 million?

Joe: Right now if you're a licensed residential appraiser, under current law, you can't do a house at \$2 million. Under the new law, they can't do a house at \$2 million, they are subject to the \$1 million level, so they either have to become certified residential, or turn the job down, because the law doesn't allow them to do it.

Jennifer Clark, Legislative Council: In code, the only law that you're allowed to reference and have it evolve to include future amended versions is internal revenue code. The basic reason for that is unconstitutional delegation lets us. You don't want to allow the feds to determine what state law is. This isn't quite as straight forward as one of those provisions that said it can't be more than 12USC1492, you know exactly what you're talking about, and you're stuck with that version. I think the argument can be made to follow this out to its logical conclusion, you're talking about a law that's in affect today, and you've got to assume that you kind of know what it is, but there are some things you can do to refer to federal law without being bound to it. The reality is it's not unconstitutional delegation if they based on future versions, unless 4 out of the 5 Supreme Court justices say it is, but before I think it was just WSI's medical standards who they said no you get the one that you're locked in at when you passed the law, so there is some ND Supreme Court case law to support the idea that you're locked in, and they may hold you to it. You could use the reference to federal education requirements that the board needs to consult with, and take into account federal education requirements, or somehow give them the legislative intent that we want you to look at them, and common sense base them on them, but it doesn't set you to them.

Rep. Kasper: Would you be able to say which may not exceed federal education requirement standards for a commit in affect on July 1, 2007?

Jennifer: Essentially, the argument that I think you're hearing today is that's what this is doing without saying it. If they change in the future you would have to come in here, and somehow update this section of law to indicate that you accept the updated version.

Rep. Ruby: They did that, and the reason would be so that it would limit the state from going beyond the standards.

Jennifer: It's done if you look through our code, it happened.

Hearing closed.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2125

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: March 7, 2007

Recorder Job Number: 4536

Committee Clerk Signature



Minutes:

Chair Keiser opened the hearing on SB 2125.

Rep. Dietrich: Basically, what this bill does is they want to clarify if an appraisal can be communicated verbally without written. I communicated with appraisers at home, and they said they immediately go back to their office, and they do put it into their files, because communicating a verbal appraisal may come up in a court of law, and can be used. The board just wanted to put it in statute that it has to be done. They're also proposing another appraiser classification, because right now there is a gap, and the gap is on appraisers from a million dollars on up, and on residential property over \$250,000. They want to clarify the apprentice level, it was an oversight in the law before, and they just would like for the apprentice level to be addressed in the bill. They were looking at an amendment on page 4, line 4 they would like to strike which may not exceed federal education requirements. We had Jennifer Clark come in on that and give us her viewpoint on that also, and she concurred with the legal council for the real estate appraiser board according to their council the bill may not adopt future amendments within the law, and that was a real concern, and that was Jennifer's dilemma, and yes that is a legitimate concern. I would like to propose an amendment to the bill on line 4,

page 4, section 4, to remove which may not exceed federal education requirements, and line 8 also.

Rep. Johnson: Second.

Voice vote was taken, amendment adopted.

Rep. Dietrich: I move a do pass, as amended.

Rep. Nottestad: Second.

Rep. Thorpe: After we had heard the bill I put down a question mark on my bill here, and I put is this fence building. I kind if think it could be. Could this be construed to be a fence building bill, in regards to people being able to get into the business, and at certain levels?

Rep. Dietrich: I can't see any areas where there may be fence building, they're just adding another area where they have employees now, and they want to fill that void. I can't see any fence building in that area, and as far as apprentice level, they are just spelling out the apprentice level. In real estate appraising an apprentice has to do 25 appraisals under a certified appraiser, and once they do 25 then they can go out on their own, and they can appraise still under the supervision, as long as the hours are around 2,040 hours, in other words 1 year. That is in statute, and they are just spelling that out.

Roll call vote was taken. 10 Yeas, 2 Nays, 2 Absent, Carrier: Rep. Dietrich

Hearing closed.

March 7, 2007

**House Amendments to Engrossed SB 2125 (78174.0201) - Industry, Business and
Labor Committee 03/07/2007**

Page 4, line 4, remove ", which may not exceed federal education"

Page 4, line 5, remove "requirement standards."

Page 4, line 8, remove ", which may not exceed federal education requirement standards."

Renumber accordingly

Date: 3-7-07
Roll Call Vote #: _____

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2125

House Industry Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass, AS amended

Motion Made By Rep. Dietrich Seconded By Rep. Nottestad

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep. Amerman	X	
Vice Chairman Johnson			Rep. Boe		X
Rep. Clark	X		Rep. Gruchalla	X	
Rep. Dietrich	X		Rep. Thorpe		X
Rep. Dosch	X		Rep. Zaiser	X	
Rep. Kasper					
Rep. Nottestad	X				
Rep. Ruby	X				
Rep. Vigesaa	X				

Total Yes 10 No 2

Absent 2

Floor Assignment Rep. Dietrich

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2125, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (10 YEAS, 2 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2125 was placed on the Sixth order on the calendar.

Page 4, line 4, remove ", which may not exceed federal education"

Page 4, line 5, remove "requirement standards,"

Page 4, line 8, remove ", which may not exceed federal education requirement standards."

Renumber accordingly

2007 SENATE INDUSTRY, BUSINESS AND LABOR

CONFERENCE COMMITTEE

SB 2125

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2125 Conference Committee**

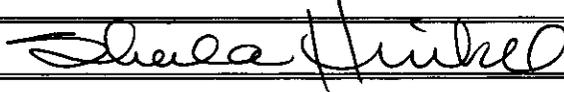
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **March 28, 2007**

Recorder Job Number: **5601**

Committee Clerk Signature



Senate bill amendment "which may not exceed federal education requirement standards."

Present at Conference Committee: SIBL Chairman S Klein R, S Hacker R, S Heitkamp D

HIBL: Rep. Dietrich R, Rep. Clark R, Rep. Zaiser D

S Klein to S Hacker, can you explain why we added those?

S Hacker: We added them because they stated they would match the requirements, nothing said it had to stop, currently you don't need your 4-year degree. Or, they could go beyond every requirement. You may find that it is hard to get an appraiser. There is a shortage in the state of ND.

S Klein: We're watching for the fence-building. Can the House explain where you came up with the amendments?

Rep. Dietrich: Which may not exceed federal education requirements, there was information we garnered from the board of the appraisers council and legislative council and Jennifer Clark come down and attempt to explain to us if she would concur or not concur. The board would like to remove "not exceed federal requirements" and they felt the language would bring serious consequences, Jennifer stated, unconstitutional in authority, and stated that they may not adopt future amendments to Federal law. It would be an unconstitutional delegation of

legislative authority. Concern was, if they are locked into requirements, there are changes expected in 1-1-08, requirements could be ND could be found out of compliance with federal requirements. FHA and those types of things.

S Klein: So what they saw, was that the Fed education requirements they would change them in the future, our intention, if the fed law comes down, you can raise it to that standard.

Rep. Dietrich: Their concern was 1-1-08. We were afraid couldn't act on it because we're not in session.

S Heitkamp: If they could meet the FHA in the loan, what could be the problem, it is up to the advisors board?

Rep Dietrich: Our cause, a bill may not adopt future amendments, appraiser may not adopt future amendments.

S Klein asked for Marilyn Foss to take the stand

S Klein: The discussion is handcuffing future rulemaking by appraisal board, our sense, we were just making it so you cannot pass the federal changes.

Marilyn Foss: What is unlawful delegation of legislative authority, also came up with 2176 which was a bill that NBDA adopted. This legislature can only adopt or incorporate a federal law as when this legislature is action in 2006, if coming in January, there would be a question about that. I don't think the ND Supreme court had a case, that has an unauthorized authority, it has been raised in other states. I understand how Jennifer Clark sees it can become a problem. By adopting federal law, the reference is to Federal law, and cannot be attached to the Federal law in the future.

S Hacker: They're proposing to increase some standards?

M Foss: There was anticipation from the Real Estate board for changes in the future.

S Hacker: Could we then adopt a piece of legislation that the requirements shall be written out at the digression at the Federal level? Sounds like we are providing flexibility more than anything. It is the administrative rule process.

Marilyn Foss: The administrative rules exercise legislative authority. The issue gets to be that when the legislature is delegated to authority, this case becomes attached to federal legislative people, the concept is, you just can't give away too much of your authority, and you can't give away your authority for the future. Is there a way to do this? Can you do a statute that says, the board shall be as this, unless the board decides differently. Probably yes. What is the language we should use to do that.

Jennifer Clark called to the room

Jennifer Clark took the stand

S Klein: In the discussion in the house side, they removed some of the language. *Read the language.* Why do we need to do this?

Rep Dietrich: *Reads from the information received Jennifer Clark*

S Klein: Yes or no? Are we going beyond by requiring that language?

Jennifer Clark: The discussion on the House, if you put it in statute, you're probably going to be locked into the federal legislation, otherwise you'll subject yourself to authority and you're locked into authority. The House wanted it to be living.

S Klein: We didn't read it that way. The whole intention was that the state doesn't go beyond the federal.

S Heitkamp: Page 4, I know you know the time is short, *reads the note*, requirements of reduction, for a period, page 4 & 5. It says the board has the power to go to the requirement to go to the level but not expect higher. I don't see where we're locking the board up.

Jennifer Clark: If you put it in statute, the only way you can do it is with the IRS code.

S Heitkamp: Does it mean that they can go above the requirements? We went through this for year. In a small town it's hard get appraisers.

Jennifer Clark: When the board requires federal requirements, we know the feds are out there, it's not as tight.

S Klein: By that administrative rule, would they go beyond the intent?

Jennifer C: I don't know.

S Klein: Was there anyone in opposition, Mr. Ibach, anyone from the rest of the industry?

Rep Dietrich: No, there was not. There is always the concern, the board setting standards, when there are federal requirements, wanted to do a double check with our council and come out of compliance with federal requirements.

Rep. Kaiser: You can see Jen was not certain about that.

As Rep Dietrich is a realtor, there were some who were not sure, but it was unanimous.

S Hacker: I don't think that anyone is going to complain, personally I think the language is fine, for the simple reason that I don't think anybody's going to complain when they go up to the Federal Standards when they move up, but if they were to go over, I think you're going to see a lawsuit that would straighten all of this out, an individual would lose their license because it would force them out by going beyond the standards of Fed. Being vague in legislation is not a bad thing. It sets the cap, and I don't think they're going to say anything if they move up to a Federal requirement.

S Heitkamp: We want to make sure in '08 we're not hindering the criteria board to meet the criteria that gets them the requirements that they need. Maybe the language could be drafted differently. It helps them meet the requirement board and may be drafted to make sure that they don't exceed the federal standard. It's asy to build those fences.

S Zaiser: I understand Jen drafted the language?

S Dietrich: No, she did not.

S Klein: Committee, would you agree to have language changed in legislative council if we find it is impossible to agree on the language.

S Heitkamp: S Hacker, he's ½ right, I don't think people will file lawsuits, but the people will quit.

S Klein: Are you comfortable with that idea? .

Rep Kaiser: I do understand S. Heitkamp's concern. I know in the rural area it is a problem
Another meeting will be scheduled.

ADJOURNED

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2125 Conference Committee B**

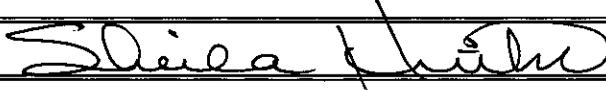
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **April 2, 2007**

Recorder Job Number: **5667**

Committee Clerk Signature



Bill concerning ND Real Estate Appraisers – Part 2

SB 2125 - meeting

Chairman Klein, S Hacker, S Heitkamp

Representatives Dietrich, Clark *Rep. Zaiser not present*

Amendments presented by R Dietrich

Quorum

Rep Dietrich: Discussion about the amendments. 2 sets, .0203 & .0204 presented by Rep. Dietrich. Came from Jennifer Clark at council on removal of the language, took out "Federal Requirements." With the amendments, it took care of the concerns.

S Klein: I think its passed the scrutiny of the crowd.

Motion for amendments .0203 by S Heitkamp

Second by S Hacker

Roll Vote on SB 2125 – Passed 5-0-1

Vote – passed amendments

Senate accedes to House amendments and further amends.

S Klein: We need to be on the original version that didn't have the Federal requirements as we passed over that, this is the amendment that would meet that, so what we want to do is to work that out. Does everyone understand the issue? It's taking it back to the original version instead of amending it as the Senate did, "would not exceed Federal Requirements," we're using this amendment.

S Heitkamp: the only way the .0203 amendments work to get it there is on the .200 version of the bill, so we did that by passing the .0203 amendments. Right?

R Dietrich: I believe that's correct.

S Klein: You're comfortable that we're not trying to do anything to pull anything on anyone here, it's just a matter of making sure we're on the right page.

S Hacker: The problem is the number is incorrect.

Roll vote on SB 2125 – 5-0-1 passed

Senate acceded to the House amendments and further amended.

CLOSED

Legislative Council approved the # following the session as 78174.0205. Intern and Clerk went to the LC office to make sure info was correct. Title .0400

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2125

That the Senate accede to the House amendments as printed on page 826 of the Senate Journal and pages 911 and 912 of the House Journal and that Engrossed Senate Bill No. 2125 be further amended as follows:

Page 4, line 6, after the period insert "The board's requirements may not exceed the appraisal foundation qualification criteria. The board shall review periodically the appraisal foundation appraisal qualification criteria to ensure the board's rules do not exceed the appraisal qualification criteria."

Page 4, line 9, after the underscored period insert "The board's requirements may not exceed the appraisal foundation qualification criteria. The board shall review periodically the appraisal foundation appraisal qualification criteria to ensure the board's rules do not exceed the appraisal qualification criteria."

Renumber accordingly

**REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)**

Bill Number 2125 (, as (re)engrossed):

Date: ~~3-28~~
4-2-07

Your Conference Committee SIBL

For the Senate:

For the House:

	3-28 4-2 VOTE				3-28 4-2 VOTE		
S Klein	P	P	Y	Rep Dietrich	P	P	Y
S Hacker	P	P	Y	Rep Clark	P	P	Y
S Leitkamp	P	P	Y	Rep Zaiser	P	A	A

recommends that the (SENATE/HOUSE) (ACCEDE) to (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) 826 --

and place _____ on the Seventh order.

, adopt (further) amendments as follows, and place 2125 on the Seventh order:

having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

DATE: _____

HOUSE CARRIER: _____

SENATE CARRIER: _____

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: Leitkamp

SECONDED BY: Hacker

VOTE COUNT: 5 YES 0 NO 1 ABSENT

REPORT OF CONFERENCE COMMITTEE

SB 2125, as engrossed: Your conference committee (Sens. Klein, Hacker, Heitkamp and Reps. Dietrich, Clark, Zaiser) recommends that the **SENATE ACCEDE** to the House amendments on SJ page 826, adopt further amendments as follows, and place SB 2125 on the Seventh order:

That the Senate accede to the House amendments as printed on page 826 of the Senate Journal and pages 911 and 912 of the House Journal and that Engrossed Senate Bill No. 2125 be further amended as follows:

Page 4, line 6, after "~~property~~" insert ". The board's requirements may not exceed the appraisal foundation qualification criteria. The board shall review periodically the appraisal foundation appraisal qualification criteria to ensure the board's rules do not exceed the appraisal qualification criteria"

Page 4, line 9, after the underscored period insert "The board's requirements may not exceed the appraisal foundation qualification criteria. The board shall review periodically the appraisal foundation appraisal qualification criteria to ensure the board's rules do not exceed the appraisal qualification criteria."

Renumber accordingly

Engrossed SB 2125 was placed on the Seventh order of business on the calendar.

2007 TESTIMONY

SB 2125

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SENATE BILL NO. 2125

**Requested by the North Dakota Real Estate Appraiser Qualifications and Ethics Board
Presented by: Joe Ibach, Chairperson, on Behalf of the Board**

January 10, 2007

The North Dakota Real Estate Appraiser Qualifications and Ethics Board (Appraisal Board) was mandated and, therefore, established in 1991 as a result of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). It was enacted through the Department of the Treasury-Federal Reserve System and Federal Deposit Insurance Corporation. Thus, the Board is a federally mandated Board with federal oversight by the Appraisal Subcommittee.

The Appraisal Board operates under Chapter 43-23.3 of the ND Century Code. As such, the Board is charged with all aspects pertaining to licensed and certified real property appraisers in North Dakota. This Board is a relatively young board as it has been in existence for only about 15 years. Our law changes generally result from the need to comply with federal changes or mandates. The Board's goal is to comply with the minimum required standards.

The proposed changes in Chapter 43-23.3 include the following:

1. Clarifying the fact that an appraisal can be communicated verbally, as well as written.
2. Currently, North Dakota offers two appraiser credential levels or (i) the licensed level and (ii) certified general level. The licensed level has a limited scope of work. FIRREA prohibits licensed appraisers from valuing residential property with a transaction value over \$1 million. Specifically, the licensed real property classification applies to the appraisal of noncomplex, 1-4 family residential properties which have a transaction value up to \$1,000,000 and complex 1-4 family residential properties which have a transaction value of up to \$250,000. In addition, a licensed real property appraiser may appraise noncomplex, nonresidential properties that have a transaction value of up to \$250,000.

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2125

The scope of work for the certified general appraiser includes the appraisal of all types of properties but subject to the appraiser's competency. Many certified general appraisers are not competent to appraise residential properties as their main focus is appraisal of nonresidential properties such as ag-land and/or commercial property.

By offering only two credential levels, a void of appraisers exists for completing appraisals of 1-4 residential property over \$1,000,000 and complex 1-4 residential property over \$250,000. To fill this void, the Appraisal Board is proposing to add another credential level or the "certified residential". The scope of work for the certified residential classification is the appraisal of 1-4 residential units without regard to transaction value or complexity. In addition, a certified residential appraiser may appraise noncomplex, nonresidential properties that have a transaction value of up to \$250,000.

The residential appraiser is given the option of expanding their abilities to complete more complex assignments by adding the certified residential classification. Many of the proposed changes throughout this Chapter relate to adding this "Certified Residential" level.

3. Under Section 6 or the "Application prerequisites", the wording has been streamlined to read "successfully complete education requirements established by the board". The Appraiser Qualifications Board (AQB) of the Appraisal Foundation adopted changes to the Real Property Appraiser Criteria that will become effective January 1, 2008. These changes represent the minimum national requirements that each state must implement for individuals applying for a real estate appraiser license or certification as of January 1, 2008. The most significant change includes increased required education. The education, experience and examination will be established by the Board and will follow the minimum requirements established by the Appraisal Foundation.

4. Other changes include primarily adding the "apprenticed" level into the law where appropriate (simply an oversight in the earlier law) and better clarification of terms.

To better serve the state's appraisal profession, I would ask that this proposed bill receive a do pass recommendation.

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SENATE BILL NO. 2125

**Requested by the North Dakota Real Estate Appraiser Qualifications and Ethics Board
Presented by: Joe Ibach, Chairperson, on Behalf of the Board**

February 27, 2007

The North Dakota Real Estate Appraiser Qualifications and Ethics Board (Appraisal Board) was mandated and, therefore, established in 1991 as a result of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). It was enacted through the Department of the Treasury-Federal Reserve System and Federal Deposit Insurance Corporation. Thus, the Board is a federally mandated Board with federal oversight by the Appraisal Subcommittee.

The Appraisal Board operates under Chapter 43-23.3 of the ND Century Code. As such, the Board is charged with all aspects pertaining to licensed and certified real property appraisers in North Dakota. This Board is a relatively young board as it has been in existence for only about 15 years. Our law changes generally result from the need to comply with federal changes or mandates. The Board's goal is to comply with the minimum required standards.

The proposed changes in Chapter 43-23.3 include the following:

1. Clarifying the fact that an appraisal can be communicated verbally, as well as written.
2. Currently, North Dakota offers two appraiser credential levels or (i) the licensed level and (ii) certified general level. The licensed level has a limited scope of work. FIRREA prohibits licensed appraisers from valuing residential property with a transaction value over \$1 million. Specifically, the licensed real property classification applies to the appraisal of noncomplex, 1-4 family residential properties which have a transaction value up to \$1,000,000 and complex 1-4 family residential properties which have a transaction value of up to \$250,000. In addition, a licensed real property appraiser may appraise noncomplex, nonresidential properties that have a transaction value of up to \$250,000.

The scope of work for the certified general appraiser includes the appraisal of all types of properties but subject to the appraiser's competency. Many certified general appraisers are not competent to appraise residential properties as their main focus is appraisal of nonresidential properties such as ag-land and/or commercial property.

By offering only two credential levels, a void of appraisers exists for completing appraisals of 1-4 residential property over \$1,000,000 and complex 1-4 residential property over \$250,000. To fill this void, the Appraisal Board is proposing to add another credential level or the "certified residential". The scope of work for the certified residential classification is the appraisal of 1-4 residential units without regard to transaction value or complexity. In addition, a certified residential appraiser may appraise noncomplex, nonresidential properties that have a transaction value of up to \$250,000.

The residential appraiser is given the option of expanding their abilities to complete more complex assignments by adding the certified residential classification. Many of the proposed changes throughout this Chapter relate to adding this "Certified Residential" level.

3. Under Section 4, "Classes of permits" and Section 6, "Application prerequisites", wording has been streamlined to read "requirements established by the board". However, the Senate Industry Business and Labor Committee amended Section 4, adding language to read "which may not exceed federal education requirements standards". There was a concern that by removing wording relative to meeting national requirements the Board could set excessive requirements at its own discretion.

The Board discussed this amendment with legal counsel and has concerns with its consequences. Should SB 2125 pass as amended, this proposed amendment could only be interpreted as adopting current federal requirements, not future amendments. According to legal counsel, a bill may not adopt future amendments to federal law. It would be an unconstitutional delegation of legislative authority. Thus, if the federal requirements change, the Board could not require the new requirements, except by amending the law.

The Appraiser Qualifications Board (AQB) of the Appraisal Foundation adopted changes to the Real Property Appraiser Criteria that will become effective January 1, 2008. These changes represent the minimum national requirements that each state must implement for individuals applying for a real estate appraiser license or certification as of January 1, 2008.

Should the Bill pass as amended by the Senate, it is questionable whether the North Dakota Appraisal Board will be able to implement these new requirements. By not implementing the new requirements by January 1, 2008, North Dakota could be found noncompliant with federal requirements relating to certifying appraisers. Therefore, the Board would like to amend Senate Bill 2125 by striking "which many not exceed federal education requirements" from Section 4.

To prevent the Board from setting excessive requirements, North Dakota law already has safeguards in place. Requirements established by the Board can only be established through the administrative rule making process mandated by NDCC ch 28-32. Thus, the administrative rule making process is a mechanism to assure the public that the "minimum requirements set be the Board" will be consistent with the "minimum requirements set on the national level".

4. Other changes include primarily adding the "apprentice" level into the law where appropriate (simply an oversight in the earlier law) and better clarification of terms.

To better serve the state's appraisal profession, I would ask that Senate Bill 2125 be amended by striking the language "which may not exceed federal education requirements standards" under Section 4. I would ask for a do pass recommendation, as amended.

NORTH DAKOTA REAL ESTATE APPRAISER QUALIFICATIONS AND ETHICS BOARD

A

PO. Box 1336
Bismarck ND 58502-1336
Telephone & Fax: (701) 222-1051
E-mail: jcampbell@bis.midco.net

SUMMARY OF NORTH DAKOTA REAL PROPERTY APPRAISER REQUIREMENTS:

To apply for a North Dakota state apprentice, licensed or certified general real property appraiser permit, an individual must: (1) be at least 18 years of age; (2) have a high school education or its equivalent; (3) possess good character; (4) have successfully completed the 15-hour *National Uniform Standards of Professional Practice* (USPAP) Course and (5) meet the remaining education, experience and testing requirements shown as follows:

CLASSIFICATION	EDUCATION HOURS	EXPERIENCE HOURS*	EXAMINATION
APPRENTICE REAL PROPERTY APPRAISER	15-hour National Uniform Standards of Professional Practice Course (USPAP)	None Required	None Required
LICENSED REAL PROPERTY APPRAISER	90 hours of Board Approved Education (15 hours must be the National USPAP Course)	2,000 Hours (240 points) over a minimum of a 24-month period	Board Approved Uniform Real Property Appraiser Licensing Examination
CERTIFIED GENERAL REAL PROPERTY APPRAISER	180 hours of Board Approved Education (15 hours must be the National USPAP Course)	3,000 Hours (360 points) over a minimum of a 30-month period – at least 50% must be in nonresidential appraisal work	Board Approved Uniform Real Property Appraiser Certified General Examination

Adequate experience is determined on a point system. The point system awards points based on the number of appraisals performed, the types of appraisals performed, and the types of properties appraised.

Standards of Professional Appraisal Practice:

All North Dakota State apprentice, licensed, and certified general real property appraisers must be fully aware of and comply with the most current appraisal practice standards known as the *Uniform Standards of Professional Appraisal Practice* promulgated by the Appraisal Standards Board of the Appraisal Foundation, as well as North Dakota Century Code 43-23.3, which addresses Real Estate Appraisers and North Dakota Administrative Code Title 101, which addresses North Dakota Real Property Appraiser Rules and Regulations.

Property Appraiser Limitations:

Certified General Real Property Appraiser. The certified general real property appraiser may appraise all types of properties (*subject to the appraiser's competency*). The certified general real property appraiser is bound by the Competency Provision of the *Uniform Standards of Professional Appraisal Practice* (USPAP).

Licensed Real Property Appraiser. The licensed real property appraiser is allowed to appraise noncomplex, one-to-four family residential properties that have a transaction value of up to one million dollars and complex one-to-four family residential properties that have a transaction value of up to two hundred fifty thousand dollars. In addition, a licensed real property appraiser may appraise noncomplex, nonresidential properties, that have a transaction value of up to two hundred fifty thousand dollars. All licensed real property appraisers are bound by the Competency Provisions of the *Uniform Standards of Professional Appraisal Practice* (USPAP).

Apprentice Real Property Appraiser. An apprentice real property appraiser permit is considered the entry level (training ground level) for a North Dakota real property appraiser. The apprentice real property appraiser permittee shall assist either a licensed or a certified general real property appraiser in appraisal work, provided the licensed or certified general real property appraiser accepts full responsibility for the appraisal performed. The scope of practice for the apprentice real property appraiser is the appraisal of those properties that the supervising appraiser is permitted to appraise. The apprentice real property appraiser shall be subject to the *Uniform Standards of Professional Appraisal Practice* (USPAP).